

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
 ) WT Docket No. 96-199  
Amendment of Part 90 Concerning the )  
Commission's Finders Preference Rules )  
To: The Commission

**FEDERAL COMMUNICATIONS COMMISSION**  
**OFFICE OF SECRETARY**

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**COMMENTS OF GWYN J. MITCHELL**

Gwyn J. Mitchell (Mitchell), by her attorney, submits the following comments in the above-captioned proceeding.

Mitchell has pending before the Commission a finder's preference request against 800 MHz Trunked SMR station WNZK839, licensed to Viking Mobile Communications, Inc.(Viking). The Commission granted a finder's preference award to Mitchell on September 30, 1994 (Case 94F093). Mitchell promptly filed an application (FCC File No. 688771) on November 28, 1994 for assignment of the target frequencies at the same site as previously licensed to Viking. However, Viking appealed the Commission action, and the matter remains unresolved. Mitchell will be directly affected if the Commission decides to dismiss all pending finder's preference requests.

The Commission's intention in establishing the finder's preference program 1991 was to aid the Commission in locating and reclaiming frequencies that were licensed but not being used, particularly those that were being "warehoused" by the licensee for future use. In return, the person who successfully identified and documented the non-use of the frequencies was given a preference in filing for the frequencies.

In WT Docket No. 96-199 the Commission proposes to eliminate the finder's preference program for frequencies in the 220-222 MHz band because of the Commission's decision to license stations in this band in the future on a commercial, market area basis, by auction and

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to give any reclaimed frequencies to the auction winner. This will eliminate the incentive for anyone other than the auction winner to assist the Commission in reclaiming unused spectrum.

Since Mitchell's pending finder's preference filing is in the 800 MHz, it has no interest in elimination of this program in the in the 220-222 MHz band. However, the Commission has also requested comments on whether the finder's preference program should be eliminated in its entirety. Furthermore, the Commission's indicated that it intends to retain the discretion to dismiss pending finder's preference requests for any service in any frequency bands for which it decides to eliminate the finder's preference program as a result of this rulemaking proceeding.

Mitchell is aware, of course, that the Commission will no longer accept new finder's preference filings in the 800 MHz band as a result of its decision in the *First Report and Order*, *Eight Report and Order*, and *Second Further Notice of Proposed Rule Making* in PR Docket No. 93-144 (*FR&O*). This rule making adopted market area licensing for the upper 200 Specialized Mobile Radio (SMR) channels, and proposed similar regulations for the remaining SMR channels. Mitchell urges the Commission to reconsider its decision on acceptance of new finder's preference filings in the 800 MHz band, and retain the finder's preference program as a means for single site SMR system to find the necessary unused frequencies to expand their systems.

However, regardless of the Commission's decision with respect to the finder's preference program generally, Mitchell believes that the Commission should complete the processing of any finder's preference requests that were filed prior to the adoption of the *FR&O*. If the Commission finds that the request is adequately supported, the applicant should be awarded a finder's preference and allowed to file an application for the frequencies identified in its request. In Mitchell's case, such an award has already been made and her application has been filed with the Commission. All that remains is for the Commission to dispose of Viking's petition for reconsideration.

Mitchell is concerned that the Commission may use the rule making proceeding in WT

Docket No. 96-199 to eliminate the finder's preference program generally; and to then dismiss all pending finder's preference request in any frequency band. Mitchell has invested considerable time and effort, and over \$5,000 of her own money, in this matter and has waited for more than 2-1/2 years for a resolution of this matter. Meanwhile, her potential customer base is being eroded by potential competitors.

It is inequitable for the Commission to establish a finder's preference program to reclaim fallow channels, invite the public to file requests for a priority in re-assigning these channels, and then dismiss requests that were filed in accordance with FCC rules and policies in effect at the time of filing after the applicant has expended considerable time, effort and resources to identify and document the availability of the frequencies, and paid the FCC a fee for the processing of its request.

Dismissing pending finder's preference requests would penalize persons, such as Mitchell, whose timely filed requests are still pending, for the Commission's delays in processing the numerous pending finder's preference filings. It appears that by this action the Commission simply wants to "clear the decks" so that it may proceed with spectrum auctions without the baggage of numerous claimants for the frequencies to be auctioned, which may depress the amount auction participants are willing to bid for the spectrum.

In summary, Mitchell strongly urges the Commission to retain the current finder's preference program in the 800 MHz band. Mitchell also urges the Commission to support the finder's preference applicants who have made a diligent efforts to identify and document unused frequencies. These finder's have expended considerable resources in reliance on Commission regulations for obtaining a preference on this reclaimed spectrum. These requests should be processed in accordance with regulations in place at the time the requests were filed. If successful, the finder's preference applicant should receive an award, a reasonable period of

time to file its application, and receive the same grandfathered right as other licensees who were licensed prior to the FCC rule changes.

Respectfully submitted,

Gwyn J. Mitchell

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